

Circuit Court for Baltimore City
Case No. C-24-C-21-003749

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 775

September Term, 2022

IN THE MATTER OF THE PETITION OF
THE MARYLAND OFFICE OF PEOPLE'S
COUNSEL

Wells, C.J.,
Berger,
Albright,

JJ.

Opinion by Berger, J.

Filed: May 9, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case is before us on appeal from an order of the Circuit Court for Baltimore City affirming a decision of the Maryland Public Service Commission (“PSC” or “Commission”). We are asked to determine whether the Commission acted arbitrarily and capriciously when it approved an August 28, 2020 “Application for Authority to Increase its Existing Rates and Charges and to Revise Its Terms and Conditions for Gas Services” (the “Application”) filed by Washington Gas Light Company (“Washington Gas”). The Maryland Office of People’s Counsel (“OPC”) urges this Court to conclude that the Commission’s approval of the Application was arbitrary and capricious because, in OPC’s view, the Application did not comply with the requirements set forth by the Commission in 2018 when the Commission approved a merger application of AltaGas Ltd. (“AltaGas”) and Washington Gas.

OPC presents one issue for our consideration on appeal, which we set forth verbatim as presented in OPC’s brief:

Does the Rate Order arbitrarily and capriciously approve Washington Gas’s request to recover from its Maryland customers corporate costs allocated from AltaGas when (1) the AltaGas Order prohibited Washington Gas from recovering corporate costs that exceeded merger savings and required \$800,000 in reduced corporate costs for five years following the merger; and (2) it is undisputed that overall corporate costs increased following the merger?

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

In 2017, AltaGas and Washington Gas jointly filed an application seeking authorization from the PSC for AltaGas to acquire Washington Gas as required by Md.

Code (1998, 2020 Repl. Vol.), § 6-105 of the Public Utilities Article (“PU”).¹ After considering written testimony and exhibits filed in support of the merger, the Commission issued Order No. 88631 authorizing the merger on April 4, 2018. The Commission’s approval of the merger was subject to fifty-two commitments. In this appeal, OPC focuses on Commitments No. 28 and 44, which OPC asserts were violated in the rate order at issue in this appeal.

Commitment 28 required Washington Gas to provide the Commission with a “side-by-side comparison by function of the pre-merger corporate and shared-services costs incurred by Washington Gas as compared to the post-merger corporate and shared-services costs incurred by Washington Gas for the five years after Merger Close.” “For purposes of [Commitment 28], per-Merger mean[t] calendar year 2016.”

Commitment 44 required Washington Gas to “track and account for merger-related savings, and transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs.” Commitment 44 required that Washington Gas “amortize the transition costs over five years,” “not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of merger-related savings,” and “ensure that customer rates reflect an annual net benefit to Washington Gas’s Maryland

¹ PU § 6-105 sets forth the requirements by which an entity must obtain prior authorization to acquire control of a public service company that operates in Maryland.

customers of not less than \$800,000 per year over the five years following Merger Close commencing with the first post-Merger base rate case.”

The Commission’s Order did not define “corporate costs allocated from AltaGas” or “net benefit,” but the Commission did explain the reasoning underlying Commitment 44:

Although some parties have contended here, and in prior cases under § 6-105, that post-merger synergy savings are too vague to quantify, we conclude that [Commitment 44] ensures that customer rates will decline or otherwise be lower than they would have been absent the merger and therefore complies with this portion of our statute. Also, as Applicants observe, unlike in most merger situations which do not realize synergy savings for years after closing, the Applicants are applying these savings to rate payers beginning in the first year. Therefore, we find that the synergy savings will result in direct ratepayer benefits.

On August 28, 2020, Washington Gas filed the application to increase rates that ultimately gave rise to this appeal. The Commission delegated the matter to a public utility law judge (“PULJ”) to conduct evidentiary proceedings. After three days of evidentiary hearings, the PULJ issued a proposed order on February 12, 2021, which approved a rate increase but at a lower rate than Washington Gas had requested. Both Washington Gas and OPC each filed appeals to the Commission.² OPC appealed the PULJ’s decision on six grounds, one of which focused upon Commitment 44.

² The Apartment and Office Building Association (“AOBA”) also filed an appeal of the PULJ’s order. AOBA is not a party to the appeal before this Court.

On April 9, 2021, the Commission issued Order No. 89799 (the “Rate Order”), which resolved all of the issues raised by the parties. With respect to the issue regarding Commitment 44, the Commission credited the expert testimony of Robert Tuoriniemi, Chief Regulatory Accountant for Washington Gas, who addressed post-merger savings in the context of Commitment 44. OPC filed a petition for rehearing on two grounds, one of which focused upon Commitment 44. Specifically, OPC sought rehearing on the issue of whether Washington Gas satisfied its obligations to demonstrate \$800,000 in annual synergy savings pursuant to the Commission’s 2018 approval of the AltaGas merger.³ The Commission denied the petition for rehearing on July 29, 2021 in Order No. 89893.

OPC subsequently filed a petition for judicial review in the Circuit Court for Baltimore City. The circuit court issued its initial order on February 28, 2022, reversing the Commission’s conclusion that Washington Gas had sufficiently complied with Commitment 44. Washington Gas filed a motion to alter or amend on March 10, 2022, which the circuit court granted on May 31, 2022. The circuit court explained that “it is clear this [c]ourt erred, factually, by using the wrong numbers in its calculation as to whether Commitment 44 was, or was not, violated by the PSC’s decision.” The circuit court, therefore, affirmed the Commission’s decision that Washington Gas had complied with Commitment 44. This appeal followed.

³ OPC further argued that the Commission did not sufficiently address its objections to the appropriateness of certain costs incurred by Washington Gas for capital projects. This issue is not before us on appeal.

Additional facts shall be discussed as necessitated by our consideration of the issues before us on appeal.

STANDARD OF REVIEW

We recently set forth the particularly discretionary standard of review applicable to decisions of the Public Service Commission in the case of *Matter of SmartEnergy Holdings, LLC*, 256 Md. App. 20 (2022), *cert. granted*, __ Md. __, Case No. 1, Sept. Term 2023 (March 7, 2023). We explained:

“The Public Utilities Article ‘sets forth the limited “scope of review” . . . over decisions by the Public Service Commission.” *Md. Off. of People’s Couns. v. Md. Pub. Serv. Comm’n*, 226 Md. App. 483, 499, 130 A.3d 1061 (2016) (quoting *Town of Easton v. Pub. Serv. Comm’n*, 379 Md. 21, 30, 838 A.2d 1225 (2003)). “It states: ‘Every final decision, order, or regulation [of] the Commission is *prima facie correct* and *shall be affirmed* unless *clearly shown* to be: (1) unconstitutional; (2) outside the statutory authority or jurisdiction of the Commission; (3) made on unlawful procedure; (4) arbitrary or capricious; (5) affected by other error of law; or (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole.” *Id.* at 499–500, 130 A.3d 1061 (quoting PUA § 3-203 (emphasis added)).

The Commission is vested with a great deal of discretion in discharging its “important and complex duties.” *People’s Couns. v. Pub. Serv. Comm’n*, 52 Md. App. 715, 722, 451 A.2d 945 (1982). “Because the Commission is well informed by its own expertise and specialized staff, a court reviewing a factual matter will not substitute its own judgment on review of a fairly debatable matter.” *Commc’ns Workers of Am. v. Pub. Serv. Comm’n*, 424 Md. 418, 433, 36 A.3d 449 (2012). In contrast, an agency’s interpretation of a statute that it administers “may be entitled to some deference,” but the weight to be accorded to that interpretation depends upon a number of considerations:

whether the agency adopted its view soon after the statute’s passage, whether the interpretation “has been applied consistently and for a long period of time,” “the extent to which the agency engaged in a process of reasoned elaboration in formulating its interpretation,” and “the nature and process through which the agency arrived at its interpretation.” *Md. Off. of People’s Couns.*, 226 Md. App. at 501, 130 A.3d 1061 (quotation marks and citations omitted). When the Maryland Public Service Commission has “clearly demonstrated that it has focused its attention on the statutory provisions in question, thoroughly addressed the relevant issues, and reached its interpretations through a sound reasoning process, its interpretation should be accorded the persuasiveness due a well-considered opinion of an expert body.” *Id.* at 505, 130 A.3d 1061 (quotation marks and citations omitted).

Id. at 39-40 (emphasis in original).

DISCUSSION

With this applicable discretionary standard in mind, we turn to the OPC’s assertion that the Commission erred when it determined that Washington Gas had demonstrated compliance with Commitment 44. OPC asserts that the side-by-side comparison of corporate and shared-services costs referenced in Condition 28 is the “only means by which one can objectively compare pre- to post-merger costs to determine” merger-related savings when determining whether Commitment 44 has been satisfied. In its Order, the Commission expressly rejected this assertion, explaining as follows:

63. The Commission agrees with Washington Gas’s contention that Commitments 28 and 44 in the AltaGas Approval Order are separate Commitments, and Washington Gas need not rely upon the same data in its annual report to establish overall synergy savings for purposes of Commitment 44. The commitments are contained in two separate sections of Appendix A to the AltaGas Approval Order, and neither commitment refers to the other.

64. Additionally, Commitment 28 explicitly requires Washington Gas to provide the Company’s annual report in its next rate case if that case occurs before the first annual report is due. This language strongly suggests that if Washington Gas does not file a base rate case before its first annual report is due, Commitment 28’s report is not required in Washington Gas’s next rate case. Washington Gas did file the Company’s Commitment 28 report in the second quarter of 2020. Therefore, the Commission agrees with Washington Gas that Commitment 44 permits Washington Gas more flexibility than OPC contends, so long as it establishes that Maryland ratepayers received over \$800,000 in synergy-related savings during the test-year.

The question before us on appeal is not whether the side-by-side comparison set forth in Commitment 28 could be used to calculate synergy savings, but, rather, whether the Commission was required to reach the conclusion that Commitment 28 *must be used* to calculate synergy savings for the purposes of Commitment 44. We disagree with OPC that merger-related savings could only be reflected via the side-by-side comparison in Commitment 28. As Mr. Tuoriniemi explained, merger-related “savings will appear across many . . . accounts” and “not simply those reflected in [OPC’s] assessment based on Merger Commitment 28.”

The Commission expressly credited Mr. Tuoriniemi’s testimony regarding synergy-related savings, observing that “Mr. Tuoriniemi testified that [Washington Gas] achieved test-year synergy-related savings in Maryland of \$829,603, slightly in excess of the annual savings required by Commitment 44.” OPC acknowledges that “Mr. Tuoriniemi included 12 pages of documents that allegedly support his cost savings calculations,” but asserts that “none of those documents identify how the savings were calculated or the

baseline used in the quantification.” First, we emphasize that the determination of whether to accept Mr. Tuoriniemi’s testimony was well within the discretion of the Commission.

Moreover, the record contains evidence that supports Mr. Tuoriniemi’s testimony. Mr. Tuoriniemi explained that when “assessing the impact of costs related to the merger on Washington Gas,” he “categorized costs into” the following “five types:”

- (1) Costs incurred by Washington Gas to gain approval of the merger;
- (2) Cost incurred by Washington Gas to close the merger;
- (3) Cost incurred by Washington Gas to integrate AltaGas, Washington Gas Holdings, Inc., and Washington Gas, including amortization thereof;
- (4) Costs for services rendered to Washington Gas by AltaGas and its affiliates; and
- (5) Costs incurred by Washington Gas eliminated by the merger.

Mr. Tuoriniemi presented the following chart demonstrating how he calculated that net synergy savings for the test year were \$829,064.00, exceeding the \$800,000 requirement set forth in Commitment 44:

	Total Company ⁴	Maryland
Test Year Charges from AltaGas	\$18,774,305	\$8,051,332
Adjusted Test Year Synergy Savings	(21,703,998)	(9,135,835)
Net Synergy Charge (Savings)	(2,929,693)	(1,084,503)
Test Year Transition Costs Post Merger	609,188	255,439
Net Change in Costs Post Merger	\$ (2,320,505)	(829,064)

Mr. Tuoriniemi further produced additional documentary evidence detailing the basis for his conclusions regarding synergy savings.

Mr. Tuoriniemi provided the following explanation for the basis of his calculation:

[Washington Gas] compiled cost savings by department and those were aggregated in total synergy savings. These represent the synergies identified to date . . . [O]nly test year amounts are included in the calculation of the adjustment . . . The amounts in the adjustment start at different dates in the test year. Therefore, the adjustment calculates the pro-rated savings included in the test year for these costs. For positions that were eliminated, the cost savings include the position's total compensation and an estimate of benefits. The exception is for pension and post-retirement benefits where a specific calculation was only available for the Chief Executive Officer position as it is publicly disclosed in the Company's Form 10-K filings.

The Commission was entitled to credit the testimony of Mr. Tuoriniemi over the testimony of OPC's expert witness Sebastian Coppola. Furthermore, the issue before us is

⁴ Washington Gas's service area includes Maryland, Virginia, and the District of Columbia. Only the Maryland data is relevant to this appeal.

not which testimony is more persuasive. The question is whether the Commission’s decision to credit Mr. Tuoriniemi’s testimony regarding synergy savings and, based upon this testimony, conclude that Commitment 44 was satisfied, was arbitrary and capricious. “To overturn a Commission decision as arbitrary or capricious, a petitioner must overcome a very deferential standard to rebut the presumption that the Commission exercised its discretion properly.” *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 461 Md. 380, 400 (2018). In our view, OPC has failed to overcome this standard in this case. The Commission’s decision was based upon expert testimony that the Commission chose to credit. It is not the province of this Court to substitute its judgment for that of the Commission.

OPC takes issue with the fact that corporate costs increased after the merger of AltaGas and Washington Gas, asserting the parties to the merger “promised the Commission” that the merger would result in “corporate cost savings for five years of at least \$800,000 per year.” The Commission expressly determined, however, that the merger required no such thing. As the Commission noted in its order denying OPC’s petition for rehearing, Commitment 44 “did not require costs to decrease so long as overall annual synergy savings exceeded \$800,000.” The record before the Public Service Commission provides sufficient support for the Commission’s determination that Commitment 44 was satisfied. Accordingly, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**